



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: JULY 25, 2005

ITEM NUMBER: *III.1*

SUBJECT: APPEAL OF MINOR CONDITIONAL USE PERMIT ZA-05-23
CHRONIC CANTINA
1870 HARBOR BOULEVARD, SUITE 210

DATE: JULY 14, 2005

FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP, SENIOR PLANNER (714) 754-5611

PROJECT DESCRIPTION

The applicant is appealing the Zoning Administrator's denial of a minor conditional use permit for a Mexican food cantina (Chronic Cantina) in the Triangle Square retail center. A minor conditional use permit is required because the applicant is proposing to serve alcoholic beverages past 11:00 p.m. and is proposing to deviate from shared parking requirements.

APPLICANT

The applicants are Tim Johnson and Keith Scheinberg, representing the property owner, Triangle Square Investments.

RECOMMENDATION

Uphold Zoning Administrator's denial of ZA-05-23.

MEL LEE, AICP
Senior Planner

R. MICHAEL ROBINSON, AICP
Asst. Development Services Director

BACKGROUND

On June 9, 2005, the Zoning Administrator denied the minor conditional use permit for the proposed Mexican cantina because the Zoning Administrator felt that the proposed use was not compatible with the uses in the surrounding area, and because there was no justification for the reduction in required parking. A copy of the Zoning Administrator's letter is attached to this report for reference.

ANALYSIS

In the appeal, the applicant states the following:

1. Parking be recalculated based upon prior variance for interior use (2,400 square feet at 4 spaces per 1,000 square feet of floor area);
2. Proposing a staggered parking evaluation based on Triangle Square's uses and times (retail versus restaurant); and
3. Hours of use will not conflict with other uses described in Zoning Administrator's letter.

Staff's responses are discussed below.

Parking

As indicated in the Zoning Administrator's letter, the applicant is proposing to increase the size of the restaurant space, which was formerly occupied by Upper Crust Pizza, to accommodate the proposed cantina. According to City records, when Triangle Square was originally approved, 1,256 parking spaces would have been required, however 1,064 spaces were approved, an approximately 15% reduction. As part of the justification for the reduced parking, Upper Crust Pizza and the other restaurants that occupied Triangle Square's upper level "Town Square" food court area were limited to a maximum of 12 indoor seats and also shared the common outdoor seating area; consequently, a retail parking requirement of 4 parking spaces per 1,000 square feet of floor area, instead of a restaurant parking requirement of 10 spaces per 1,000 square feet of floor area for the first 3,000 square feet of floor area, and 20 spaces per 1,000 square feet for each additional 1,000 square feet over the first 3,000 square feet of floor area, was allocated to the food court restaurants. None of the outdoor seating area was intended to be enclosed for the exclusive use of one restaurant.

The applicant is proposing to enclose approximately 1,555 square feet of the common outdoor food court seating area and number of seats for the exclusive use of Chronic Cantina patrons, and the interior seating area of the existing 2,400 square foot restaurant is proposed to be expanded beyond what was originally permitted for Upper Crust Pizza. As a result, Code requires the restaurant parking ratio for the cantina and the enclosed patio.

This results in an increase of 39 required on-site parking spaces for the proposed cantina, which cannot be provided because of previously granted parking reductions.¹

With regard to the applicant's proposal to "stagger" the parking based upon the different hours of the retail versus restaurant uses (i.e., daytime versus evening uses), as discussed below, there are concerns with the proposed use during the evening hours that are not related to the parking issue. Additionally, because the cantina is proposed to operate between the hours of 11:00 a.m. and 2:00 a.m., daytime use of the restaurant would conflict with current and future daytime retail uses.

Hours of Use

As indicated earlier, a minor conditional use permit is required because the applicant is proposing to serve alcoholic beverages past 11:00 p.m. (2:00 a.m. closing time is proposed). The operating hours for the proposed cantina and the other existing restaurants operating in proximity to the proposed use are described in the Zoning Administrator's letter. Because the cantina is in proximity to Sutra Lounge and The Yardhouse, which also serve alcoholic beverages past 11:00 p.m., the Police Department determined (as summarized in the attached memo), that the proximity of the proposed cantina to the other establishments in general, and Sutra Lounge in particular, could create noise, loitering, and security problems for customers and surrounding uses in the late evening/early morning hours.

ALTERNATIVES

The Commission has the following alternatives:

1. Uphold the Zoning Administrator's denial of ZA-05-23; or
2. Overturn the Zoning Administrator's denial and approve ZA-05-23 subject to making the appropriate findings and with the recommended conditions of approval.

CONCLUSION

Based on the issues identified in the Zoning Administrator's decision letter and this report, staff recommends upholding the Zoning Administrator's denial of ZA-05-23.

Attachments: Planning Commission Resolution
 Exhibit "A" Draft Findings
 Exhibit "B" Conditions of Approval
 Appeal
 Zoning Administrator Letter dated June 9, 2005
 Police Department Memo
 Applicant's Project Description and Justification
 Zoning/Location Map
 Plans

¹ Although Triangle Square is not fully occupied currently, the Code provisions for parking is based on the center being fully occupied and parking available for use by all patrons.

cc: Deputy City Manager - Dev. Svs. Director
Sr. Deputy City Attorney
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

Keith M. Scheinberg
Scheinberg & Stock
Attorneys at Law
2901 West Coast Hwy Suite 200
Newport Beach, CA 92663

Romy Miurg
Triangle Square Investments, LLC
c/o Charles Dunn Real Estate Services, Inc.
800 West Sixth Street, Suite 600
Los Angeles, CA 90017

Sirin Pojanasomboon
Operations Manager – Triangle Square
Charles Dunn Company
800 West Sixth Street, Suite 600
Los Angeles, CA 90017

File Name: 072505ZA0523Appeal	Date: 071105	Time: 10:00 a.m.
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A

RESOLUTION NO. PC-05-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA DENYING MINOR CONDITIONAL
USE PERMIT NO. ZA-05-23**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY
RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Tim Johnson and Keith Scheinberg, representing Triangle Square Investments, owner of the real property located at 1870 Harbor Boulevard, Suite 210, requesting approval of a minor conditional use permit for a Mexican food cantina serving alcoholic beverages past 11:00 p.m. and to deviate from shared parking requirements; and

WHEREAS, the Zoning Administrator denied Minor Conditional Use Permit ZA-05-23 on June 9, 2005; and

WHEREAS, on June 16, 2005, Minor Conditional Use Permit ZA-05-23 was appealed to the Planning Commission; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 25, 2005.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby **DENIES** Minor Conditional Use Permit No. ZA-05-23 with respect to the property described above.

PASSED AND ADOPTED this 25th day of July, 2005.

Chair, Costa Mesa
Planning Commission

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, R. Michael Robinson, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on July 25, 2005, by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Secretary, Costa Mesa
Planning Commission

EXHIBIT "A"**FINDINGS**

- A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is not compatible with developments in the same general area. Specifically, the proposed cantina is in proximity to Sutra Lounge and Yardhouse Restaurant, which also serve alcoholic beverages past 11:00 p.m. Sutra Lounge in particular has have documented complaints and calls for Police service for noise, loitering, and security problems. Triangle Square was originally approved with a parking reduction that allowed the restaurants within the "Town Square" food court area to be parked at a lower parking requirement; because a portion of the existing outdoor seating area is proposed to be enclosed, additional parking is required for both the cantina and the enclosed patio, which the retail center cannot provide because of previously approved parking reductions. Granting the minor conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity.
- B. The proposed use does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
- The proposed use is not compatible and harmonious with the uses in the surrounding area.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- D. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"**CONDITIONS OF APPROVAL (If Request is Approved)**

Plng.

1. The minor conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.
2. A copy of the conditions of approval shall be kept on premises and presented to any authorized city official upon request. Applicant shall notify new business/property owners of conditions of approval upon transfer of business or ownership of land.
3. The use shall be limited to the type of operation described in the staff report. Any change in the operational characteristics including, but not limited to, hours of operation or provision of live entertainment and/or dancing, will require approval of an amendment to the conditional use permit, subject to Planning Commission approval.
4. The licensee shall not employ or use the services of any full-or part-time active or reserve peace officer currently employed by the City of Costa Mesa or any contiguous agency for security purposes.
5. Live entertainment, amplified music and/or dancing is prohibited.
6. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any time. Occupant loads for the open patio area and the enclosed building area shall be calculated and posted separately.
7. There shall be no room or designated area reserved for the exclusive use of designated persons or "private club members."
8. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures are necessary to comply with this requirement.
9. There shall be no sales of alcoholic beverages for off-site consumption.
10. At all times the premises is open for business, the sale and service of alcoholic beverages shall be made only in conjunction with the sale and service of food.
11. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and meals during the same time period. The applicant shall at all times maintain records which reflect separately the gross sales of food and gross sales of alcoholic beverages of the business. The records shall be kept no less frequently than on a quarterly basis and shall be made available to the Development Services Director or his designee on demand.

12. The restaurant shall remain a "bona fide public eating place" as defined by Section 23038 of the California Business and Professions Code.
13. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas over which applicant has control, to prevent trash, graffiti, and loitering. Applicant shall further provide adequate lighting above the entrances to the premises sufficient in intensity to make visible the identity and actions of all persons entering and leaving the premises.
14. The applicant shall maintain free of litter of all areas of the premises over which applicant has control.
15. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied.
16. All operational conditions and restrictions shall be complied with, regardless of operating hours, 24 hours a day, seven days a week.
17. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
18. The application will be reviewed annually by Planning Staff. Any problems or violations of the conditions of approval may require the application to be referred to the Planning Commission for modification or revocation.
19. Hours of operation shall be limited to 11:00 a.m. - 2:00 a.m., Tuesday through Saturday, and 11:00 a.m. - 12 midnight, Sunday.
20. The conditions of approval and ordinance or code provisions of ZA-05-23 shall be blueprinted on the face of the site plan as part of the plan check submittal package.

CITY OF COSTA MESA
P.O. BOX 1200
COSTA MESA, CALIFORNIA 92626
APPLICATION FOR APPEAL OR REHEARING

FEE: \$ 700.00

Applicant Name Keith Scheinberg / Chronic Contina
Address 1870 Harbor Blvd suite A-210
Phone 949-289-7467 Representing Chronic Contina

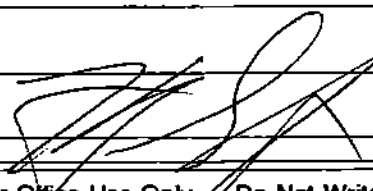
Decision upon which appeal or rehearing is requested: (Give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) Denial of MUP ZA-05-23

Decision by: _____

Reason(s) for requesting appeal or rehearing:

- 1) Parking be reevaluated Based on prior variance for interior use (2400 at 4 per thousand),
- 2) Proposing a staggered parking evaluation based on Triangle Square uses & TIMES (Retail vs Restaurant)
- 3) Hours of use will not conflict with other uses described in Zoning Admin's Letter

RECEIVED
CITY OF COSTA MESA
DEVELOPMENT SERVICES DEPARTMENT

Date: 6-16-05 Signature: 

JUN 16 2005

For Office Use Only - Do Not Write Below This Line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:

PLANNING DIVISION - CITY OF COSTA MESA

DESCRIPTION/JUSTIFICATION

Application #: 2A-05-23

Environmental Determination: *EXEMPT*

Address:

1870 HAPPE BLVD., SUITE 210, TRIANGLE SQUARE

1. Fully describe your request:

We Request to open a Mexican Food Cantina in the old upper crust pizza location

2. Justification

- A. For a Conditional Use Permit or Minor Conditional Use Permit: Describe how the proposed use is substantially compatible with uses permitted in the same general area and how the proposed use would not be materially detrimental to other properties in the same area.

THE LOCATION WE ARE USING WAS A RESTAURANT BEFORE AND THERE WERENT ANY PROBLEMS. WE DONT THINK THERE SHOULD BE ANY ISSUE WITH OUR PROPOSED USE.

- B. For a Variance or Administrative Adjustment: Describe the property's special circumstances, including size, shape, topography, location or surroundings that deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification due to strict application of the Zoning Code.

3. This project is: (check where appropriate)

☐ In a flood zone.

☐ Subject to future street widening.

☐ In the Redevelopment Area.

☐ In a Specific Plan Area.

4. I have reviewed the HAZARDOUS WASTE AND SUBSTANCES SITES LIST published by the office of Planning and Research and reproduced on the rear of this page and have determined that the project:

☒ Is not included in the publication indicated above.

☐ Is included in the publication indicated above.

Signature

March '96

Date

3/30/05

KSDB INC.
1600 SEA HORSE CIRCLE
COSTA MESA, CA 92627

RECEIVED
CITY OF COSTA MESA
DEVELOPMENT SERVICES DEPARTMENT

Wednesday, May 25, 2005

JUN 2 2005

To: Planning Dept, Mel Lee, Mike Robinson
Fr: Keith Scheinberg, KSDB Inc
Re: Chronic Cantina Restaurant Permit ZA-05-23

OVERVIEW OF OPERATIONS

Chronic Tacos Inc. was established as a CA corporation in 2001. Chronic Tacos opened for business in July of 2002. Experiencing heavy traffic from the beginning, Chronic Tacos in Newport Beach was an immediate success. Our concept was simple, offer fresh, fast, authentic "made to order" Mexican food to the community of Newport Beach. In May of 2005, Chronic Tacos has opened another shop in Huntington Beach with a 2,000 square foot restaurant experiencing success again from day one. With family entertainment at the heart of operations, Huntington Beach was outfitted with pool tables, music, video games, and a sports themed environment. Projected company sales for 2006 will be in the neighborhood of 2.5 million which leads to great city earned revenue.

Our next step in this vision was to find a location for a sit down restaurant and Cantina where you can listen to Latin music, and watch a High Definition sports game on 60" plasma displays. After a year of looking we found it in our own backyard (Triangle Square). Knowing that this was a failing mall, which has never had a successful tenant, wasn't an easy decision to take this spot. There have been multiple tenants and a high turnover rate as you are aware with the corporate giant (NIKE TOWN) leaving the city of Costa Mesa, as well as Virgin in discussions to leave. La Salsa, a very reputable company, was just one company who went up there with the wrong ideas and the wrong concept. **We will not be following in their footsteps!** We believe that Mexican Food will work in that center if offered in an indoor/outdoor environment featuring sports events and family fun.

Our clientele will range from the family waiting to see Star Wars, to the business man after work settling down for happy hour by one of our beautiful outdoor fire pits. When we designed this restaurant we took into consideration that the inside was not big enough for dining and a dedicated outside area is essential. When that mall was built smoking was allowed inside. The current trend of outdoor dining along with a dedicated smoking area is **REQUIRED** for success. With this taken into account, we decided to enclose the patio to allow for a FULL service dining experience incorporated with High Definition sports entertainment.

Our menu will consist of a full service sit down authentic Mexican cuisine serving just about every Mexican food product you would find in the market. Our recipes come from

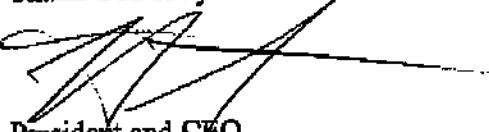
old family recipes and the highly successful El Toro Carniceria in Santa Ana. The theme of the restaurant comes from the Mexican Riviera.

As with any start up company we will have to play with our hours to decide which days we need to stay open late and when to close up early. Obviously, we are not going to stay open till 2am everyday but we would like to have the option depending on foot traffic in Triangle Square (that does not currently exist). In the fax letter dated 5/13/05 and our proposed restaurant referred to as a "club or lounge" mainly because of our requested hours of operation, this is 100% inaccurate. A similarity to this situation would ask what kind of candy store stays open till 11pm, one that feeds off movie theater traffic would be the appropriate answer. We will be doing the same thing to Sutra, Yard House and the movie theatre. Chronic Cantina will be catering to customers that don't want to wait an hour for dinner, or have an hour to burn before or after their 10:45 movie. This is the only type of cooperation that will make Triangle Square successful as an entertainment center.

We hope this letter better explains what our intended use is at this property at Triangle Square. We hope you will give allow this restaurant use, and grant a variance for parking. The security issues have become priority number one for us, as well as the management of Triangle Square who has submitted a new security plan to deal with any and all problems. We believe that a Mexican food is the perfect fit and compliments the existing businesses like Edwards, Sutra, and Yard House.

On a side note, I both own a house in Costa Mesa and run 2 tax paying businesses within Costa Mesa. Supporting the city in which I own and work I would imagine would be a welcomed enterprise.

Thank You for your time and consideration.



President and CEO
Keith M Scheinberg
Chronic Tacos Inc.
KSDB Inc.
Chronic Taco Restaunt Group Inc.



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**